IN THE

Supreme Court of the United States

October Term, 1965

No. 673

MARTHA CARDONA,

Appellant,

against

JAMES M. POWER, THOMAS MALLEE, MAURICE J. O'ROURKE and JOHN R. CREWS, Members of and constituting the Board of Elections of the City of New York,

Appellees,

and

LOUIS J. LEFKOWITZ, as Attorney General,

Intervenor-Appellee.

ON APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK

JURISDICTIONAL STATEMENT

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JURISDICTIONAL STATEMENT

Appellant appeals from a final judgment of the New York State Court of Appeals (3 of the 7 Judges dissenting) made and entered May 27, 1965, amended June 19, 1965 and further amended July 9, 1965, and submits this Statement to show that the Supreme Court of the United States has jurisdiction of this appeal and that substantial Federal questions under the Constitution of the United States are presented.

Opinions Below

The majority and minority opinions in the New York State Court of Appeals are reported in 16 N. Y. 2d 639 (Appendix A). The decisions amending the remittiturs of

the Court of Appeals and setting forth the Constitutional questions raised in and passed upon by that Court are reported in 16 N. Y. 2d 708 and 827 (Appendix B).

The memorandum decision of the New York Supreme Court, Special Term Part I is reported in March 17, 1964, New York Law Journal (Appendix C).

Jurisdiction

This action was brought in the New York State Supreme Court, New York County, to challenge the validity of a series of New York laws under which the right of certain selected classes to vote in elections is conditioned upon their ability to read and write in the English language.

The judgment of the New York State Court of Appeals was made and entered as above noted. The jurisdiction of the United States Supreme Court to review this judgment by direct appeal is provided for by Title 28, § 1257 (2) of the United States Code. The following typical decisions of this Court sustain its jurisdiction to review this decision by direct appeal: *Westberry* v. *Sanders*, 376 U. S. 1 (1964); *Reynolds* v. *Sims*, 377 U. S. 533 (1964).

New York Law Involved

New York State Constitution, Article II, § 1 (Appendix D).

New York State Election Law, Sections 150, 155, 168 and 201 (Appendix D).

Questions Presented

The questions presented by this appeal as set forth in the Notice of Appeal herein served and filed August 19, 1965, are:

1. Whether a native born United States citizen, of United States—citizen parents, literate in the native language of the part of the United States in which she was born and educated can properly be deprived of her right as a citizen to vote in elections solely because she cannot read or write in English, a language which is to her foreign.

2. Whether the provisions of Article II Section 1 of the New York Constitution and Sections 150, 155, 168 and 201 of the Election Law of the State of New York, as applied to appellant infringe her rights under the 5th, 14th and 15th amendments to the Constitution of the United States, in that such provisions of New York Law unreasonably discriminate between classes of citizens, in that such provisions exempt from all literacy requirements persons who could have qualified to vote although illiterate prior to 1921, in that such provisions exempt from their application entirely persons unable to read and write English because of physical defects, and in that said provisions exempt from all literacy requirements veterans of the Armed Forces, and occupants of veterans' hospitals regardless of whether or not they themselves are veterans, while at the same time denying the right to vote to persons literate in the Spanish language, a language native to the part of the United States in which they were born and in whose United States government schools they were educated.

3. Whether the literacy in English provisions of Article II Section 1 of the New York State Constitution, and Sections 150, 155, 168 and 201 of the New York State Election Law as applied to appellant constitute violations of Article IV Sections 2 and 4 and Article VI Section 2 of the Constitution of the United States in that such provisions of New York Law unreasonably and unconstitutionally discriminate against native born citizens of the United States of Puerto Rican birth and deny them rights equal to those accorded to native born citizens of other parts of the United States and in that such provisions violate the Treaty of Paris of 1898, the United Nations Charter, rati-

fied as a Treaty on August 8, 1945, and the expressed commitment of the United States to the United Nations in 1953, pursuant to such United Nations Charter.

Statement of the Case

These are the circumstances, as alleged in the Petition, out of which this proceeding arose:

Martha Cardona, the Petitioner, is a native-born citizen of the United States, as were both her parents. She was born in Puerto Rico, then, as now, a part of the United States, whose common language is Spanish. She was educated in Puerto Rico in schools supported by the United States Government. The curriculum in those schools is substantially identical to those in other parts of the United States, and the text books used are identical to those in common use in other parts of our country, the only substantial difference arising out of the fact that the lessons and the texts are in the language in common use in the areas involved. In Petitioner's case the language used was that common in Puerto Rico—Spanish. Since 1948, petitioner has been a resident of New York City. She is married and has three children, all of whom were born in New York City. She is literate in her native language, Spanish. She does not read and write English. She has a general understanding of government and politics, at least equal to that of adult citizens, residents and voters of New York. She is interested in her government and desires to play the proper citizen's role in her government. Before taking up residence in New York City, petitioner lived in Puerto Rico where she regularly voted in Gubernatorial, legislative and municipal elections, pursuant to the provisions of 48 U. S. Code, Ch. 48. Petitioner is a regular reader of the New York City Spanish-language daily newspapers and periodicals and a regular listener to the broadcasts of the Spanish-language radio stations in New York City, each of which media of communication provide as much or more

coverage of government and politics as do most English papers and radio stations.

The answer admitted that on July 23, 1963, petitioner appeared at the New York City Board of Elections, and asked to be registered and enrolled as a voter. She presented evidence of her citizenship, age and residence, none of which was questioned or disputed. The Board of Elections required that Petitioner submit to a literacy test in the English language. Petitioner informed the Board that she was unable to pass such a test in the English language, and requested that she be given a literacy test in her native language, Spanish. This the Board of Elections refused to do and rejected Petitioner's request for enrollment as a voter upon the sole and exclusive ground that she was unable to pass a literacy test in English, a language which to her is foreign.

The answer admitted that the sole basis upon which the Board of Elections rejected Petitioner's demand that she be enrolled as a voter is the provisions of Article II, Sec. 1 of the New York Constitution (and the provisions of Sections 150, 162 and 201 of the Election Law, which purportedly carry out the cited provision of the Constitution) which, in part, provides that "after January 1, 1922 no person shall become entitled to vote * * * unless such person is also able, except for physical disability, to write and read English".

Petitioner challenged the validity of the cited provisions of the New York Constitution and Election Law insofar as they purport to apply to United States citizens of Puerto Rican birth, literate in the language of Puerto Rico, and not literate in the English language.

Briefly stated, the principal grounds upon which petitioner asserts the unconstitutionality of the English-literacy test provisions of the New York State Constitution and the provisions of the Election Law which purport to carry them out are:

1. The constitutional provision contains a "grandfather clause" exception in favor of qualified voters as of the date of the adoption of the provision and of certain other classes which, by unreasonably discriminating against others, infects the entire provision.

2. The statutory and constitutional provisions contain exceptions in regard to veterans and veterans' dependents and dependents of veterans' dependents, which by unreasonably discriminating against others, infects the entire pattern of literacy requirements.

3. The literacy-test provisions are unrelated, either in purpose or effect, to determining the ability of citizens competently to exercise the elections franchise and are designed not to assure qualification to vote but disqualification.

4. By depriving of their franchise United States born citizens fully literate in the language native to the part of the United States in which they were born, upon the sole ground that they are not literate in the language native to another part of the United States, such English-literacy test provisions, deprive those citizens of the privileges and immunities guaranteed to all citizens of the United States and defeat the principal of reciprocal rights and immunities which lies at the base of those guarantees.

5. The English-literacy test requirements insofar as they preclude Puerto Rican-born United States citizens from exercising their franchise constitute an unlawful discrimination based upon race.

6. The English-literacy test requirements insofar as they are applied to Puerto Rican-born citizens, violate the Treaty of Paris pursuant to which Congress alone is permitted to legislate in regard to the political rights of such Puerto Rico-born citizens, and violate United States Statutes which carry out that Treaty, and are in conflict with the Congress-enacted Constitution of Puerto Rico which forbids the application of literacy tests to Puerto Rico-born citizens.

7. The English-literacy test requirements are in direct conflict with the formal commitment made by the United States to the United Nations in regard to the political rights of Puerto Rico-born United States citizens.

The factual basis upon which these grounds are asserted are set forth in detail in the petition.

Since the dismissal of the petition was on the law alone, the complete accuracy of the factual allegations must be assumed for the purpose of this appeal.

The New York Supreme Court at Special Term, denied petitioner's application and dismissed the petition as a matter of law, with a short opinion. The decision is founded upon a prior decision of New York Courts in *Camacho* v. *Rogers,* 7 N. Y. 2d 762 and a decision by a three-judge Court in *Camacho* v. *Rogers,* 199 F. Supp. 155.

The Court of Appeals of New York, to which a direct appeal was taken pursuant to N. Y. C.P.L.R. 5601 (b) 2, affirmed, three of the seven Judges dissenting. The majority decision was expressed in a brief memorandum which merely referred to that Court's decision without opinion in *Camacho* v. *Rogers,* 7 N. Y. 2d 762.

Chief Judge Desmond wrote a dissenting opinion in which he was joined by Judges Fuld and Burke. That opinion stated, in part (16 N. Y. 2d 708, 710):

> "Denial of voting rights to this competent, intelligent and reasonably well-educated and informed native-born American citizen, simply because she is unable to meet New York State's literacy-in-English requirements, is unreasonable and unconstitutionally discriminating, particularly since by reason of the effective date of the literacy amendment to Article II, Section 1 of the State Constitution and the exceptions in section 168 of the Election Law, many persons are allowed to vote regardless of literacy."

Presentation of the Federal Questions

As noted above, the Federal Constitutional questions presented upon this appeal were first raised in the Petition to the New York Supreme Court initiating this action.

They are further set forth in the amended remittitur of the Court of Appeals of New York referred to above and set forth in Appendix B.

THE FEDERAL QUESTIONS ARE SUBSTANTIAL

1. The exemption from literacy test requirements of pre-1921 citizens, physically disabled citizens and a host of other classes of citizens on bases utterly unrelated to voter qualification infects the whole pattern of New York literacy-in-English laws and renders them totally invalid.

A. The operative provision of the New York Constitution (Art. II, § 1) and the provisions of the New York Election Law (§ 162[2]) limits the requirement of literacy to citizens who reach the stage at which they become qualified to vote "after January 1, 1922," and, in addition, exempts from the literacy requirements persons whose illiteracy stems from a "physical" disability. Thus, a person totally illiterate is permitted to register and vote if he was a citizen and resident of New York State prior to January 1, 1921, even though such persons have never before voted in an election (see *Matter of Ferayorni* v. *Walter*, 202 N. Y. S. 91, 121 Misc. 602). Thus, the constitutional provision referred to is infected by an invalid "grandfather clause" which effects an unwarranted discrimination against non-literate persons who achieved ordinary voting status after January 1, 1922.

The purpose of the exemption provision is plain; it was to assure the continuance of voting rights to native-born New Yorkers and other presently qualified residents and

to deny voting rights to later-arriving New York residents and to persons later-obtaining American citizenship. Under the exemption an illiterate native-born New Yorker, who had never voted before, would be allowed to vote, but a similarly situated United States-born citizen migrating to New York from Alabama or Mississippi after January 1, 1922 would not be allowed to vote, and neither would a native-born United States citizen migrating from Puerto Rico, after 1922, even though literate in the language of his place of birth, or a United States citizen, literate in the language of his place of birth, naturalized after 1921. There is obviously no rational basis for such discrimination. A citizen who had that status in 1922 is obviously no more competent to play a full citizenship role than a citizen who achieved that status in 1942 or 1962. Yet, under the cited provisions of the Constitution, a totally illiterate person who had reached the age of 21 before January 1, 1922 is permitted to vote, while his neighbor, who is fully literate in half a dozen languages other than English is denied the right to vote, merely because he was not 21 years old, citizen and resident of New York on January 1, 1922. Such a distinction is irrational and unsupportable as a matter of law.

Grandfather clauses, indistinguishable in principle from the one here under review have been repeatedly struck down by this Court. See, *e.g. Guinn* v. *U. S.*, 238 U. S. 347; *Lassiter* v. *Northampton Election Board*, 360 U. S. 45. See also, *Lassiter* v. *Taylor*, 152 F. Supp. 295.

The provisions of law embodying the literacy test are manifestly not related to determining the ability of a citizen to exercise the elective franchise, either in their purpose nor in their effect. As recent extensive United States Senate Hearings have shown (*Literacy Tests and Voter Requirements in Federal and State Elections*, Hearings before Subcommittee on Constitutional Rights of Judiciary Committee, 87th Congress, 2nd Session I 1962),

the history of these provisions and provisions similar to them in the laws of other States, reveals that their purpose is to exclude certain groups of citizens from taking part in elections and to reduce them to a second-class status. The terms of the provisions referred to show that, in their effect, they make irrational distinctions between citizens of differing racial background and serve not to assure qualification to vote but disqualification. Such, too, is the history of New York's literacy laws. See *Debate on the Literacy Test,* N. Y. Times, Section 7, p. 2, Oct. 23, 1921; 3 Rev. Rec. N. Y. State Constitutional Convention 1915, pp. 3021-3055.

B. The irrational, discriminatory and totally invalid character of New York's literacy requirement is further revealed by numerous exceptions which have been carved out, in addition to those discussed above.

Thus, New York Election Law § 155 provides for absentee registration by inmates and patients and resident-relatives of inmates and veterans in Veterans' hospitals. In the case of a new order so confined to such a hospital his mere "signature" to an application for such registration is deemed to

> "constitute *conclusive* proof of his or her literacy"

and if such person is "unable to sign the application" the mere certification of his oath

> "shall constitute *conclusive* proof of his or her literacy."

This exemption from the literacy test applies not only to veterans but also to "the spouses, parents and children" of veterans "whether living or dead" when they are veteran-institution inmates, and to *their* "spouses, parents and children" who are "with such inmates" (id, subd. 11).

Again, under New York Election Law § 168[6], the mere presentation of a certificate of honorable discharge from the armed forces constitutes

"*conclusive* proof of his or her literacy."

Thus, a person totally illiterate in any language is qualified to vote under New York law, if he is a veteran or, whether or not he is a veteran, if he is confined to a Veterans' institution, or is staying with any inmate of a veteran institution, yet a person fully literate in the language of his place of birth in the United States is deprived of his right to vote unless he is also literate in the language common to other parts of the United States.

C. Finally, in the light of the present status of the arts of communication, the literacy test is particularly lacking in justification. For, although in the 1920's when the literacy test provision was incorporated into the Constitution, reading matter was the principal means of mass communication, such is far from the fact today. In contrast, at the present time radio and television have taken over by far the largest share of the area of mass communication, particularly in the field of government and politics. See *e.g.* Christenson & McWilliams-*Voice of the People,* (1962) pp. 39-53; Tyler, *Television and Radio* (1961), *of Mass Communication,* (1954); Evans, *The Eighth Art,* 1962) pp. 39-53; Tyler, *Television and Radio,* (1961), pp. 109, *et seq.*

Of course, the circumstance that the challenged provisions of the New York State Constitution and parts of the New York Election Law have existed for over forty years, does not lend them validity. For the literacy test was devised "as a cloak to discriminate against one class or group" (See Douglas, J. in *Gray* v. *Sanders,* 372 U. S. 368, 379), and the passing of the years and the changes in methods of mass communication have accentuated this quality.

In origin, purpose, operation and effect the challenged provisions of law are discriminating and void. They are direct violations of the Equal Protection clause of the 14th Amendment. Upon this ground alone the English literacy test requirements of New York State Constitution Article II § 1 and Election Law §§ 150, 168 and 201 (1) are invalid.

2. In violation of the 14th and 15th Amendments, the English literacy test requirements invalidly deprive native-born U. S. Citizens of Puerto Rican origin, whose native language is Spanish, of their basic citizenship rights.

We turn now to a consideration of the validity under the 14th and 15th Amendments of the cited provisions of the New York State Constitution and the provisions of the New York Election Law referred to as they apply to American-born citizens of Puerto Rican birth, literate in their own language and not literate in the English language.

A. At the outset, attention is called to a commonly overlooked but significant distinction which exists between the United States citizens of Puerto Rican origin and other so-called foreign language groups. The Puerto Rican is no more foreign-born than is a person born in New York or Ohio. He is a native American, and he can no more shed his citizenship (except by attaining citizenship in another nation) than he can shed his own skin. The language he speaks is just as American as the language spoken by the residents of New York or Ohio. Indeed, it was earlier in common use in our country than English. The Puerto Rican's culture is as American as the New Yorker's or the Ohioan's. All share a common heritage, whose special values lie in their differences as well as in their similarities and in the contributions each makes to the multitude of cultures of which the American culture is an amalgam.

Upon this aspect of the case, we address ourselves to the basic provision of the Federal Constitution, which, we submit, controls here; the first section of the 14th Amendment:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the states wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States . . . nor deny to any person within its jurisdiction the equal protection of the laws."

That petitioner is a born citizen of the United States is undisputed; that it therefore follows that she has by her residence attained citizenship of New York is unquestioned. There remains only the question whether the challenged provisions of the New York Constitution (and the provisions of the Election Law which purport to carry it out) deprive her of her New York State citizenship or constitute laws which "abridge" her "privileges or immunities," as a citizen of the United States or deny her "equal protection of the laws."

It is submitted that the question need only be asked to be answered. For clearly, petitioner cannot properly call herself a "citizen" of New York, if a basic right of citizenship—the right to vote, is denied to her, particularly when the only reason for that denial is her natural state as a Puerto Rican born citizen, whose native language differs from that commonly prevalent in New York.

Can it be said that the "law" pursuant to which this deprivation of citizenship rights is denied petitioner does not "abridge" her "privileges and immunities" and does not deny her "equal protection of the laws"? Surely not. Consider: non-literacy in the English language is an inherent quality of United States citizens of Puerto Rican birth, as much as is the quality of their skin color or

other physical characteristics. Requiring that native-born United States citizens of Puerto Rican origin be able to read and write English before attaining citizenship rights in New York is the equivalent of requiring that they be born in an English-language part of the United States as a condition of attaining New York State citizenship. Both are clearly offensive to the concept of National citizenship, which is basic in our form of government. If by virtue of an inherent quality, tied to their very nature, and resting upon the part of United States territory from which they came, United States citizens can be deprived of their citizenship rights, then the cited provision of the 14th Amendment is rendered meaningless.

The right to vote is a basic right of all citizens of our Nation. Without that basic right no person can claim to be in possession of full and equal citizenship in a democracy or under a republican form of government.

As this Court held in *Westbery* v. *Sanders*, 84 S. Ct. 526, 545 (1964), and repeated in *Reynolds* v. *Sims*, 84 S. Ct. 1362, 1380 (1964):

> "No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory, if the right to vote is undermined. Our Constitution leaves no room for classification of people in a way that unnecessarily abridges this right."

Petitioner pays taxes for the support of the government. She stands ready, as all of her class, to serve her country in war. In the service of the army of the United States Americans of Puerto Rican origin have not been asked to take literacy tests in English—and Puerto Ricans have fallen before enemy guns in three wars in which our country was in jeopardy. She is subject to the laws of her country. She sustains all of the duties and obligations of

citizenship, yet she has been denied the one right of citizenship which is greater than all others: the right to join in choosing who shall govern her. The rights of citizens of the United States must be reciprocal or discrimination necessarily results. Under the Constitution of the Commonwealth of Puerto Rico, adopted by the Puerto Rico on March 3, 1952, and amended and ratified by the United States Congress on July 3, 1952 (30 Stat. 1759) not only may an English-speaking New York citizen who moves to Puerto Rico vote in elections held there, notwithstanding his inability to read or write the native language of Puerto Rico, but the Constitution of Puerto Rico (Art. III, § 5, Art. VI, § 4), guarantees that he may be elected to office notwithstanding that he is literate only in English.

In contrast to these provisions, the cited provisions of New York law operate to automatically deprive petitioner of her basic rights of United States citizenship upon her achieving New York citizenship: In Puerto Rico petitioner was a duly qualified voter and as such voted in regular and special elections; by moving to New York and becoming a citizen of New York, it has, in effect been held by respondents, petitioner forfeits her basic citizenship rights. It is submitted that this is inconsistent with reason and law.

The United States citizenship which petitioner's birth in Puerto Rico endowed her with, was not a limited privilege to enjoy only such of those rights of citizenship as various State governments might see fit to accord to her: it is an unqualified right of citizenship and it includes the right to live in, and automatically attain full citizenship in every State of the Union. If by the accident of her birth in a part of our Nation in which the common language is Spanish petitioner can be deprived of her right to vote for President, Senator, Congressman, Legislator, Mayor and Councilman in the City where she lives, she is relegated to a "second-class citizenship" which, as this Court said recently, our Constitution prohibits (*Schnieder* v. *Rusk*, 84 S. Ct. 1187, 1190 [1964]).

3. By virtue of the Treaty of Paris, pursuant to which the United States attained jurisdiction over Puerto Rico, Congress has exclusive control over the civil and political rights of persons born in Puerto Rico. By a succession of federal statutes and by its enactment of the Constitution of Puerto Rico Congress has granted full United States citizenship to such persons and precluded the application to them of literacy tests. An English-literacy test requirement imposed upon the Spanish-speaking Puerto Ricans is totally inconsistent with such a grant of full citizenship and with the express policy of Congress.

Entirely apart from what we have already said, there are further considerations which compel the conclusion that the English-literacy test requirements of New York law cannot validly be applied to petitioner and other native-born United States citizens of Puerto Rican origin.

Puerto Rico was incorporated into the territory of the United States pursuant to the Treaty of Paris of 1898 (30 Stat. 1759). That treaty provided:

> "The civil rights and political status of the native inhabitants [of Puerto Rico] shall be determined by Congress."

In the Jones Act of 1917 (Public Law 600) and in later statutes (See, *e.g.* Nationality Act of 1940, ch. 876, Tit. I, subch. II) Congress expressly accorded full United States citizenship to native-born Puerto Ricans. They were, in the language of the Jones Act, "declared and shall be deemed and held to be citizens of the United States". In none of those statutes has Congress in any way indicated that the "political rights" of persons born in Puerto Rico shall be dependent upon their ability to read and write English. Not only would such a condition be patently absurd and unjust, but it would violate the Treaty of Paris.

Precisely to the contrary, Congress has explicitly precluded political discrimination against Spanish-speaking, native-born Puerto Ricans. This Congress did by its enactment (66 Stat. 327) of Article VI, section 4 of the Constitution of the Commonwealth of Puerto Rico, which provides:

> "No person shall be deprived of the right to vote because he does not know how to read or write or does not own property."

The Treaty of Paris, the complex of statutes enacted pursuant thereto and the Congressionally-enacted Constitution of the Commonwealth of Puerto Rico are all, in the respects noted, at variance with the English-language literacy provisions of New York law above referred to, and those provisions of law are invalid as applied to petitioner and to other United States citizens of Puerto Rican birth, under the United States Constitution and particularly Article VI thereof, which provides that, "all treaties made under the authority of the United States shall be the Supreme Law of the Land".

The Congress-enacted Constitution of the Commonwealth of Puerto Rico (the authority of which lies in the Treaty of Paris) is both implicitly and explicitly at variance with the English-literacy test requirements of New York law. That Constitution approved by the President and enacted by Congress (66 Stat. 327), closes its preamble as follows:

> "We consider as determining factors in our life our citizenship of the United States of America and our aspiration continually to enrich our democratic heritage in the individual and collective enjoyment of its rights and privileges; our loyalty to the principles of the Federal Constitution; the coexistence in Puerto Rico of the two great cultures of the American Hemisphere; our fervor for education; our faith in justice; our devotion to the courageous, industrious and peaceful way of life; our fidelity

to individual human values above and beyond social position, racial differences and economic interests; and our hope for a better world based on these principles."

The foregoing provisions of the Constitution of the Commonwealth of Puerto Rico, as adopted by the United States Congress, constitute the observance by Congress of the obligations cast upon it by the Treaty of Paris, under which Congress and Congress alone has power and authority to determine the political rights of American citizens of Puerto Rican birth. Recognizing that ours is not a single-culture Nation but a fusion of several cultures, principally English and Spanish, Congress has declared that both Spanish and English are the recognized tongues of our country and our hemisphere. This it has done, not only by providing that public elective office under the Puerto Rico Constitution which it enacted shall be open to those of either language, but it has gone further and expressly prohibited the application of literacy tests to citizens born in Puerto Rico, as a qualification for voting. Congress has recognized that the full citizenship status of Puerto Rican born Americans would not be attained if the exercise of those rights were dependent upon a reading and writing knowledge of a language which, to the Puerto Rican is foreign.

Upon these grounds, too, the provisions of New York law which preclude petitioner from exercising her citizen's right to vote solely upon the ground of her inability to read and write English are void as violative of Article IV, §§ 2 and 4; Article VI, Amendments V, XIV and XV of the United States Constitution.

4. The United States by a separate commitment to United Nations in regard to its citizens of Puerto Rican origin as well as by its adoption of the U. N. Charter, has undertaken to accord to them full citizenship rights, without regard to their language, and this precluded the imposition of literacy tests upon them.

In *Curran* v. *City of New York*, 191 N. Y. Misc. 229, affd. 275 N. Y. App. Div. 784, the Court expressly held that the United States and each of the States are bound by the United Nations Charter and by all commitments made by the United States under and pursuant to that Charter. And this leads us to the final and independent argument against the application of the English-literacy test requirements to petitioner and other United States-born citizens of Puerto Rican origin.

We note at the outset that the United Nations Charter is a "multilateral treaty" which was signed and ratified by the President and the Senate pursuant to the Treaty power, embodied in United States Constitution Art III, § 2, para. 2 (*Curran* v. *City of New York, supra*), and that its preamble requires the United States, as a party, to accord "respect . . . for fundamental freedoms for all, without distinction as to race, sex, language or religion" (id.). ". . . these provisions", Justice Hill observed in the *Curran* case, "are the law of the land."

However, we need not rest there. For, in 1953, the government of the United States formally and expressly committed itself to the United Nations to accord to its citizens of Puerto Rican birth full and complete political rights. This, the United States Government did as part of an elaborate presentation, the purpose of which was to exempt itself from United Nations control over Puerto Rico as "colonial territory" of the United States, pursuant to Article 73 (e) of Chapter XI of the United Nations Charter. (*U. S. Participation in the U. N.*, Report

by the President to the Congress for the year 1953, pp. 181, *et seq.*). Upon the basis of this commitment, the General Assembly of the United Nations adopted a Resolution declaring Chapter XI of the United Nations Charter inapplicable to Puerto Rico (*i.*).

Addressing itself specially to the political rights accorded to the people of Puerto Rico, the "*Memorandum by the Government of the United States, etc.*" submitted to the United Nations on March 21, 1953, stated that the people of Puerto Rico have had:

> ". . . universal adult suffrage since 1939. There have been no property requirements since 1906 *and the last literacy requirements were removed in 1935.*"

It further noted that full and complete United States citizenship has been enjoyed by the Puerto Rican people since 1917, and that, "the Constitution of the Commonwealth (of Puerto Rico) is similar to that of a State of the Federal Union". It further assured the General Assembly:

> "The people of Puerto Rico continue to be citizens of the United States as well as Puerto Rico and the fundamental provisions of the Constitution of the United States continue to be applicable to Puerto Rico . . . The People of Puerto Rico will participate effectively in their government through universal, secret and equal suffrage, in free and periodic elections in which differing political parties offer candidates, and which are assured freedom from undemocratic practices by the Constitution itself."

The commitment made formally by the Government of the United States to the General Assembly of the United Nations, constitutes, under the United Nations Charter which was duly ratified by the President of the United States, by and with the advice and consent of the Senate of the United States on August 8, 1945, an exercise of

the treaty and foreign relations powers of the Government of the United States pursuant to Article VI of the Constitution of the United States and the United Nations Participation Act (22 U. S. C. §§ 287, *et seq.*), and as such, binds the United States and each State of the Union (*Curran* v. *City of New York, supra*), in the language of Article VI of the Constitution, "any Thing in the Constitution or Laws of any State to the contrary notwithstanding."

The imposition upon United States citizens of Puerto Rican birth of the intolerable and unreasonable condition that in order to exercise their political rights as United States citizens under the commitment aforementioned they must learn a language which to them is foreign, directly violates the essence of their citizenship and effectively cancels out that commitment, in contravention of Article VI of the United States Constitution, the United Nations Participation Act, the Charter of the United Nations, and the formal commitment referred to. If any State is permitted to require that Spanish-speaking citizens of Puerto Rico origin must be English-speaking in order to attain full citizenship, the result would be to nullify their United States Citizenship and take away what Congress has granted and what the United States government committed itself to in the United Nations. Consequently, for these reasons, too, the application to petitioner of the provisions of New York law referred to, the denial by respondents of her application to register for voting upon the sole ground of her inability to read and write English and their denial of her demand that she be permitted to take a voter's literacy test in her own language, Spanish, are all acts contrary to supervening Federal Constitution law and treaty.

CONCLUSION

It is apparent that substantial and highly significant questions of Constitutional law are presented by this appeal. The distinguished Chief Judge of the New York Court of Appeals and two of his colleagues, all outstanding jurists, have so expressed themselves. These questions are neither resolved nor involved in the recently-enacted Civil Rights Law; they stand separate and independent of that law. However, in measuring the significance and substantiality of the questions presented by this appeal we submit that it is appropriate to call attention to the historic March 15, 1965 address of the President in which he characterized it as "wrong—deadly wrong—to deny any of your fellow Americans the right to vote in this country."

It is to right this great wrong that we are appealing to this Court and it is respectfully submitted that our action presents questions of grave Federal concern which this Court should consider and determine.

Respectfully submitted,

PAUL O'DWYER,
Attorney for Appellant,
50 Broad Street,
New York City.

W. BERNARD RICHLAND,
of Counsel

APPENDIX A

Opinions of New York Court of Appeals

MEMORANDUM OPINION OF MAJORITY

[16 N. Y. 2d 639]

In the Matter of MARTHA CARDONA, Appellant, v. JAMES M. POWER et al., Constituting the Board of Elections of the City of New York, Respondents, and LOUIS J. LEFKOWITZ, as Attorney-General, Intervenor-Respondent.

Argued May 17, 1965; decided May 27, 1965.

Elections—literacy test—Special Term dismissed petition for order directing Board of Elections to register petitioner as duly qualified voter or permit petitioner to take literacy test in Spanish—New York State Constitution (art. II, §1) and Election Law (§§ 150, 168, 201) require voters to be able to read and write English—contention that constitutional and statutory requirements were invalid—order affirmed.

APPEAL, on constitutional grounds, from an order of the Supreme Court at Special Term (HENRY CLAY GREENBERG, J.), entered March 13, 1964 in New York County, dismissing the petition in a proceeding under article 78 of CPLR for an order directing the Board of Elections of the City of New York to register petitioner as a duly qualified voter or, in the altrenative, directing said board to permit petitioner to take the literacy test in Spanish and, upon her passing successfully such test, to register her as a duly qualified voter. The New York State Constitution (art. II, § 1) and the Election Law (§§ 150, 168, 201) require any person, after January 1, 1922, except for physical disability, to be able to read and write English before being entitled to vote. Petitioner was born in Puerto Rico and, since 1948, has been a resident of New York City. She is literate in

Spanish but does not read and write English. In the Court of Appeals petitioner argued that the constitutional and statutory literacy requirements were invalid; that they deprived native-born United States citizens of Puerto Rican origin whose native language is Spanish of their basic citizenship rights in violation of the Fourteenth and Fifteenth Amendments of the United States Constitution; that the English literacy test requirement imposed upon Spanish-speaking Puerto Ricans is inconsistent with the grant of full citizenship and the policy of Congress, and that the United States, by a separate commitment to the United Nations in regard to its citizens of Puerto Rican origin, as well as by its adoption of the United Nations Charter, has undertaken to accord to them full citizenship rights, without regard to their language. The intervenor-respondent argued that no substantial constitutional question was presented by reason of prior decisions upholding the literacy test; that the United States Supreme Court had upheld the literacy test (*Lassiter* v. *Northampton Election Bd.*, 360 U. S. 45), and that the literacy test did not discriminate against petitioner in violation of the equal protection clause or any other provision of the Federal Constitution.

Paul O'Dwyer and *W. Bernard Richland* for appellant.

Louis J. Lefkowitz, Attorney-General (Samuel A. Hirshowitz, George C. Mantzoros and *Barry J. Lipson* of counsel), in his statutory capacity under section 71 of the Executive Law, intervenor-respondent.

No appearance for remaining respondents.

Donald S. Engel for American Jewish Congress, *amicus curiae.*

Order affirmed, without costs. (See *Matter of Camacho* v. *Doe*, 7 N. Y. 2d 762.)

Concur: Judges Dye, Van Voorhis, Scileppi and Bergan. Chief Judge Desmond dissents and votes to reverse in the following memorandum in which Judges Fuld and Burke concur.

DISSENTING OPINION OF CHIEF JUDGE DESMOND
(CONCURRED IN BY JUDGES FULD AND BURKE)

Chief Judge DESMOND (dissenting). I dissent and vote to reverse and to grant the prayer of the petition. Denial of voting rights to this competent, intelligent and reasonably well-educated and informed native-born American citizen, simply because she is unable to meet New York State's literacy-in-English requirements, is unreasonable and unconstitutionally discriminatory particularly since, by reason of the effective date of the literacy amendment to section 1 of article II of the State Constitution and the exceptions in section 168 of the Election Law, many persons are allowed to vote regardless of literacy.

APPENDIX B

Remittiturs of New York Court of Appeals

COURT OF APEALS

STATE OF NEW YORK, ss.:

PLEAS in the Court of Appeals, held at Court of Appeals Hall, in the City of Albany, on the 27th day of May in the year of our Lord one thousand nine hundred and sixty-five, before the Judges of said Court.

Witness,
THE HON. CHARLES S. DESMOND,
Chief Judge, Presiding.

RAYMOND J. CANNON, Clerk.

Remittitur May 27, 1965.

Sup. Ct. No. 11 65

In the Matter of the Application of

THE APPLICATION OF
MARTHA CARDONA,
Appellant,

for an order &c.

VS.

JAMES M. POWER, & ors., Members of and constituting the Board of Elections of the City of New York
Respondents,

and

LOUIS J. LEFKOWITZ, Attorney General, appearing specially pursuant to Section 71 of the Executive Law,
Intervenor-Respondent.

BE IT REMEMBERED, That on the 8th day of January in the year of our Lord one thousand nine hundred and sixty-

five, Martha Cardona, the appellant—in this cause, came here unto the Court of Appeals, by Paul O'Dwyer, her attorney, and filed in the said Court a Notice of Appeal and return thereto from the order of the Supreme Court, New York County, and James M. Power, & ors., Members of and constituting the Board of Elections of the City of New York, the respondents, and Louis J. Lefkowitz, as Attorney General, appearing specially pursuant to Section 71 of the Executive Law, the intervenor-respondent in said cause, afterwards appeared in said Court of Appeals by Leo A. Larkin, and Louis J. Lefkowitz, pro se, attorneys.

Which said Notice of Appeal and the return thereto, filed as aforesaid, are hereunto annexed.

WHEREUPON, The said Court of Appeals having heard this cause argued by Mr. Paul O'Dwyer, of counsel for the appellant, and by Mr. Samuel A. Hirshowitz, of counsel for the intervenor-respondent, no appearance for the respondents, brief filed by amicus curiae, and after due deliberation had thereon, did order and adjudge that the order herein be and the same hereby is affirmed, without costs.

And it was also further ordered, that the records aforesaid, and the proceedings in this Court, be remitted to the Supreme Court of the State of New York, there to be proceeded upon according to law.

THEREFORE, it is considered that the said order be affirmed, without costs, &c., as aforesaid,

And hereupon, as well the Notice of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the Supreme Court of the State of New York before the Justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said Supreme Court, before the Justices thereof, &c.

/s/ RAYMOND J. CANNON
Clerk of the Court of Appeals
of the State of New York

Appendix B—Remittiturs of New York Court of Appeals

STATE OF NEW YORK

IN COURT OF APPEALS

At a Court of Appeals for the State of New York, held at Court of Appeals Hall in the City of Albany on the Tenth day of June A. D. 1965.

Present,
HON. CHARLES S. DESMOND,
Chief Judge, presiding.

Mo. No. 548

IN THE MATTER OF
THE APPLICATION OF MARTHA CARDONA,
Appellant,
FOR AN ORDER &C.

VS.

JAMES M. POWERS & ORS., Members of and constituting the Board of Elections of the City of New York
Respondents,

and

LOUIS J. LEFKOWITZ, as Attorney General, appearing specially pursuant to Section 71 of the Executive Law,
Intervenor-Respondent.

An application to amend the remittitur in the above cause having heretofore been made upon the part of the appellant herein and papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, that the said application be and the same hereby is granted, the return of the remittitur requested and, when returned, it will be amended by adding thereto the following:

> Upon the appeal herein there were presented and necessarily passed upon questions under the Constitution of the United States, viz.: Appellant contended that the provisions of Article II, Section 1 of the New York Constitution and Sections 150, 155, 168 and 201 of the Election Law as applied to her infringed her rights under the Fifth, Fourteenth and Fifteenth Amendments to the Constitution of the United States in that such provisions unreasonably discriminated between classes of citizens. The Court of Appeals held that there was no violation of appellant's constitutional rights.

AND the Supreme Court of New York County hereby is requested to direct its Clerk to return said remittitur to this Court for amendment accordingly.

A copy

GEARON KIMBALL,
Deputy Clerk.

Appendix B—Remittiturs of New York Court of Appeals

STATE OF NEW YORK

IN COURT OF APPEALS

At a Court of Appeals for the State of New York, held at Court of Appeals Hall in the City of Albany on the Ninth day of July A. D. 1965.

Present,

HON. CHARLES S. DESMOND,
Chief Judge, presiding.

Mo. No. 612

IN THE MATTER OF

THE APPLICATION OF MARTHA CARDONA,
Appellant,

FOR AN ORDER &C.

VS.

JAMES M. POWERS & ORS., Members of and constituting the Board of Elections of the City of New York
Respondents,

and

LOUIS J. LEFKOWITZ, as Attorney General, appearing specially pursuant to Section 71 of the Executive Law,
Intervenor-Respondent.

A motion for a further amendment of the remittitur in the above cause to this Court having heretofore been made upon the part of the appellant herein and papers having been submitted thereon and due deliberation having been thereupon had, it is

Appendix B—Remittiturs of New York Court of Appeals

ORDERED, that the said motion be and the same hereby is granted, the return of the remittitur requested and, when returned, it will be further amended by adding thereto the following:

> Upon the appeal herein there were also presented and necessarily passed upon certain questions, in addition to those specified in the order of this Court dated June 10, 1965, under the Constitution of the United States, viz.: Petitioner contended that the literacy-in-English provision of Article II, section 1 of the New York State Constitution and sections 150, 155, 168 and 201 of the New York State Election Law as applied to her, constituted a violation of Article IV, sections 2 and 4 and Article VI, section 2 of the Constitution of the United States, in that such provisions unreasonably and unconstitutionally discriminates against native-born citizens of the United States of Puerto Rican birth and denies them rights equal to those accorded native-born citizens of other parts of the United States, and that such provision violates the Treaty of Paris of 1898, the United Nations Charter, ratified as a treaty on August 8, 1945, and the express commitment of the United States to the United Nations in 1953 pursuant to such United Nations Charter. The Court of Appeals held there was no violation of petitioner's constitutional rights.

AND the Clerk of the Supreme Court of New York County hereby is requested to return said remittitur to this court for amendment accordingly.

A copy

GEARON KIMBALL,
Deputy Clerk

Appendix B—Remittiturs of New York Court of Appeals

[16 N. Y. 2d Series]

In the Matter of MARTHA CARDONA, Appellant, v. JAMES M. POWER, et al., Constituting the Board of Elections of the City of New York, Respondents, and LOUIS J. LEFKOWITZ, as Attorney-General, Intervenor-Respondent.

Submitted June 7, 1965; decided June 10, 1965.

Motion to amend remittitur granted. Return of remittitur requested and, when returned, it will be amended by adding thereto the following. Upon the appeal herein there were presented and necessarily passed upon questions under the Constitution of the United States, viz.: Appellant contended that the provisions of section 1 of article II of the New York Constitution and sections 150, 155, 168 and 201 of the Election Law as applied to her infringed her rights under the Fifth, Fourteenth and Fifteenth Amendments to the Constitution of the United States in that such provisions unreasonably discriminated between classes of citizens. The Court of Appeals held that there was no violation of appellant's constitutional rights. [See 16 N Y 2d 639.]

[16 N. Y. 2d 827]

In the Matter of MARTHA CARDONA, Appellant, v. JAMES M. POWER et al., Constituting the Board of Elections of the City of New York, Respondents, and LOUIS J. LEFKOWITZ, as Attorney-General, Intervenor-Respondent.

Submitted July 8, 1965; decided July 9, 1965.

Motion for a further amendment of remittitur granted. Return of remittitur requested and, when returned, it will

be amended by adding thereto the following: Upon the appeal herein there were also presented and necessarily passed upon certain questions, in addition to those specified in the order of this court dated June 10, 1965, under the Constitution of the United States, viz.: Petitioner contended that the literacy-in-English provision of section 1 of article II of the New York State Constitution and sections 150, 155, 168 and 201 of the New York State Election Law, as applied to her, constituted a violation of sections 2 and 4 of article IV and section 2 of article VI of the Constitution of the United States, in that such provision unreasonably and unconstitutionally discriminates against native-born citizens of the United States of Puerto Rican birth and denies them rights equal to those accorded native-born citizens of other parts of the United States, and that such provisions violates the Treaty of Paris of 1898, the United Nations Charter, ratified as a treaty on August 8, 1945, and the express commitment of the United States to the United Nations in 1953 pursuant to such United Nations Charter. The Court of Appeals held there was no violation of petitioner's constitutional rights. [See 16 N Y 2d 639, 708, 717.]

APPENDIX C

Memorandum Decision of New York State Supreme Court, New York County

By Mr. Justice Greenberg

[N. Y. L. J. March 17th, 1964]

In *Re Cardona* (Power)—Petitioner institutes this article 78 proceeding for an order directing the Board of Elections of the City of New York to register petitioner as a duly qualified voter, or, in the alternative, directing said board to permit petitioner to take the literacy test in Spanish, and upon her passing successfully such test, to register her as a duly qualified voter. Petitioner claims that she is a United States citizen of Puerto Rican birth, literate in the language of Puerto Rico, but not literate in the English language. Petitioner challenges the validity of Article II, section 1, of the New York Constitution, and the implementing statutes, sections 150 168 and 201 of the Election Law, in so far as they require any person after January 1, 1922, except for physical disability to be able to read and write English before being entitled to vote. Twice before unsuccessful challenges were made to their validity (Camacho v. John Doe, 31 Misc. 2d 692, aff'd 7 N. Y. 2d 762, and Camacho v. Rogers, 199 F. Supp. 155 [S. D. N. Y., three-judge court]). In Lassiter v. Northhampton Company (Board of Elections, 360 U. S. 45), the court upheld the constitutionality of a North Carolina statute requiring that a prospective voter be able to read and write any section of the Constitution of North Carolina in the English language. No valid ground of persuasive quality has been offered in behalf of the application as would justify a departure from prior rulings on the same issue. Accordingly, the application is denied and the petition is dismissed.

APPENDIX D

New York Laws Involved

A. New York State Constitution, Article II, § 1

Article II—Suffrage

§ 1. [Qualifications of voters.]

Every citizen of the age of twenty-one years, who shall have been a citizen for ninety days, and an inhabitant of this state for one year next preceding an election, and for the last four months a resident of the county, city, or village and for the last thirty days a resident of the election district in which he or she may offer his or her vote, shall be entitled to vote at such election in the election district of which he or she shall at the time be a resident, and not elsewhere, for all officers that now are or hereafter may be elective by the people, and upon all questions which may be submitted to the vote of the people, provided however that no elector in the actual military service of the state, or of the United States, in the army, navy, air force or any branch thereof, or in the coast guard, or the spouse, parent or child of such elector, accompanying or being with him or her, if a qualified voter and a resident of the same election district, shall be deprived of his or her vote by reason of his or her absence from such election district, and the legislature shall provide the manner in which and the time and place at which such absent electors may vote, and for the return and canvass of their votes and provided, further, that in any election district in which registration is not required to be personal, no elector who is registered and otherwise qualified to vote at an election, shall be deprived of his or her right to vote by reason of his or her removal from one election district to another election dis-

trict in the same county within the thirty days next preceding the election at which he or she seeks to vote, and every such elector shall be entitled to vote at such election in the election district from which he or she has so removed.

Notwithstanding the foregoing provisions, after January first, one thousand nine hundred twenty-two, no person shall become entitled to vote by attaining majority, by naturalization or otherwise, unless such person is also able, except for physical disability, to read and write English.

B. New York State Election Law

§ 150. Qualification of voters.

A person is a qualified voter in any election district for the purpose of having his or her name placed on the register if he or she is or will be on the day of the election qualified to vote at the election for which such registration is made. A qualified voter is a citizen who is or will be on the day of election twenty-one years of age, and who has been an inhabitant of the state for one year next preceding the election, and for the last four months a resident of the county, city or village and for the last thirty days a resident of the election district in which he or she offers his or her vote, provided, however, that in any election district in which registration is not required to be personal, no elector who is registered and otherwise qualified to vote at an election, shall be deprived of his or her right to vote by reason of his or her removal from one election district to another election district in the same county within the thirty days next preceding the election at which he or she seeks to vote, and every such elector shall be entitled to vote at such election in the election district from which he or she has so removed. If a naturalized citizen, such person must, in addition to the foregoing provisions, have been naturalized

at least ninety days prior to the day of election. In the case of a person who became entitled to vote in this state by attaining majority, by naturalization or otherwise after January first, nineteen hundred twenty-two, such person must, in addition to the foregoing provisions, be able, except for physical disability, to read and write English. A "new voter," within the meaning of this article, is a person who, if he is entitled to vote in this state, shall have become so entitled on or after January first, nineteen hundred twenty-two, and who has not already voted at a general election in the state of New York after making proof of ability to read and write English, in the manner provided in section one hundred sixty-eight.

§ 155. VETERANS' ABSENTEE REGISTRATION.

1. A voter, other than a registered voter qualified to vote at the ensuing general election, may, if he is an inmate or patient in a veterans' bureau hospital in this state, be registered in the manner herein provided.

2. The board of elections in the county in which a veterans' bureau hospital is located shall appoint, after nomination by the respective county chairmen of the parties which in the preceding gubernatorial election polled the highest and next highest number of votes, one or more bipartisan boards of registration, each composed of two inspectors of election, who shall attend such hospital between the hours of nine o'clock in the morning and five o'clock in the evening on the seventh Thursday before the general election and, in the event that it be necessary for the completion of their herein described duties, on the seventh Friday before such election and such other days as may be necessary and then and there receive from inmates or patients therein the applications of such of them as desire and are qualified to be registered.

3. Each application shall be made in writing and under oath, administered by a member of such board. Except as herein otherwise provided, it shall be signed by the applicant. If he state that he is unable to sign, such board shall administer to him the oath prescribed by section one hundred sixty-nine and each member thereof shall certify, at the bottom of the application, to the nature of the applicant's disability regarding his inability to sign.

4. The application shall state the facts and circumstances which the applicant alleges qualify him to apply for registration pursuant to this section. It shall contain facts from which may be determined his qualifications as a voter and the election district in which he resides. It shall be accompanied by an affidavit of the medical superintendent or other medical head of such hospital that the applicant is an inmate or patient therein and that he expects that the applicant will not be discharged from the hospital before the day following the next general election.

5. The signature of any new voter applying to be registered in the manner prescribed by this section shall constitute conclusive proof of his or her literacy. If an oath is administered to any new voter because such voter is unable to sign the application, the administering of such oath and the certification by the board, as prescribed in subdivision three of this section, shall constitute conclusive proof of his or her literacy.

6. Following the execution of the application and affidavit, as above described, such board shall give the applicant an enrollment blank, in the form prescribed by sections one hundred twenty-two and one hundred twenty-three. After the applicant marks the blank or has it marked for him or returns it unmarked, it shall be deposited by or

for him in an envelope, together with such application and affidavit. The envelope shall bear upon its face the legend "Veteran's Absentee Registration Application." Before receiving the next application such board shall seal the envelope, address it to the board of elections in the county where the applicant resides and note upon a form provided for such purpose the date of the application, the name and residence address of the applicant and the name of the hospital at which the application was received.

7. At the end of each such day of registration each member of such board shall subscribe his full name and residence address to such list of applicants and shall together return the list and the sealed envelopes to the board of elections in the county where such hospital is located and the latter shall immediately separate for its own attention, in accordance with subdivision eight of this section, each envelope addressed to it and mail each other envelope to the board of elections to which it is addressed.

8. a. Each board of elections which receives such an envelope shall immediately file its contents, shall determine whether the applicant is already registered, and, if he is not, shall, in the manner provided in subdivision one of section one hundred eighteen for investigation of applications for absentee voters' ballots, investigate the truth of the statements contained in the application.

b. If it determines that the applicant is entitled to be registered as a qualified voter in such county, it shall, where permanent personal registration is not in effect, before the first day prescribed for local registration, enter in the copies of the appropriate election district register the voter's name and residence and the party, if any, in which he has enrolled; it shall securely attach the application in the signature copy of the register opposite the name of the voter, as thus entered, and note in the remarks

column that the voter has registered by veteran's absentee registration.

c. Where permanent personal registration is in effect, the board of elections shall, in such case, forthwith cause a central registration board to fill out, on behalf of such applicant, a set of registration records, using the information furnished in his application, paste a photostatic copy of the applicant's signature, as the same appears on such application, in each space provided on the registration records for the insertion of the registrant's signature, and insert such registration records in the proper file maintained by it for such purpose. Such registration records shall be marked or stamped conspicuously with the legend "Hospitalized Veteran" or "Hospitalized Veteran's Relative", as the case may be. If an application for registration under this section or an application for an absentee ballot from a person otherwise entitled to be registered under this section is received and it appears that such applicant or person is already registered under permanent personal registration from the residence address stated on his application, his permanent personal registration records shall likewise be stamped or marked conspicuously with the legend "Hospitalized Veteran" or "Hospitalized Veteran's Relative", as the case may be.

9. The cost incurred by the county in which such veterans' bureau hospital is located, for the registration of voters as herein provided, shall be apportioned to the counties in which such voters reside in proportion to the number of applicants for such registration residing in such counties.

10. The secretary of state shall prescribe by proper rules and regulations for the administration of registration as herein provided and shall furnish the forms and supplies required therefor.

11. The privileges of this section relating to veterans' absentee registration are hereby extended to the spouses, parents and children of honorably discharged members of the armed forces of the United States, whether living or dead, when such relatives are inmates of veterans' bureau hospitals or federal or state institutions provided for the care of such persons and to the spouses, parents and children of inmates and patients of veterans' bureau hospitals who are with such inmates and patients and for that reason will be absent from the counties of their residence at the time of the next general election and entitled to an absentee ballot under the provisions of subdivisions four and six of section one hundred seventeen, and each of such persons upon application, if otherwise lawfully entitled thereto, shall be registered in the manner provided by this section. All provisions of this section relative to the application for registration and to the powers and duties of boards of election and other election officers also shall apply to the registration of the persons above described.

12. a. In case the veterans' bureau hospital in which any veteran entitled to vote in this state is an inmate or patient, is located outside the state of New York, the signing of such veteran's name to an application for an absentee ballot pursuant to the provisions of section one hundred seventeen shall constitute personal registration wherever such registration is required.

b. The provisions of paragraph a of this subdivision are hereby extended to the spouse, parent or child of such veteran, accompanying or being with him or her, if a qualified voter and a resident of the same election district; the signing by such spouse, parent or child of his or her name to an application for an absentee ballot pursuant to the provisions of section one hundred seventeen shall constitute personal registration whenever such registration is required.

c. Whenever an application under the foregoing paragraphs a and b of this subdivision is received by the board of elections, the board, where permanent personal registration is not in effect, shall cause to be entered in the appropriate election district register, the voter's name and residence, if it is not already thereon; and shall cause the application to be securely attached in the signature copy of the register opposite the name of the voter, and note in the remarks column that the voter has registered by veteran's absentee registration. Where permanent personal registration is in effect, the board shall proceed in the manner provided in paragraph c of subdivision eight of this section.

d. In either case, such signing, if the applicant be a new voter, shall constitute conclusive proof of his or her literacy.

e. Such application shall be accompanied by a certificate in the form prescribed in subdivision eight of section one hundred seventeen and all applications filed pursuant to the provisions of this subdivision shall be subject to the provisions of section one hundred nineteen so far as applicable.

§ 168. Proof of Literacy and Regulations

1. The board of regents of the state of New York shall make provisions for the giving of literacy tests.

In election districts in which personal registration is required, a certificate of literacy issued to a voter under the rules and regulations of the board of regents of the state of New York to the effect that the voter to whom such certificate is issued is able to read and write English, or is able to read and write English save for physical disability only, and to the extent of such physical disability, which shall be stated in the certificate, shall be received by elec-

tion inspectors and central and veterans' absentee registration boards as conclusive of such fact, except as hereinafter provided.

In election districts in which personal registration is not required, literacy tests may be given by the election inspectors on election and registration days only.

Literacy tests may be given by central registration boards to applicants for registration by such boards at any time during business hours within the period when central registration is permitted.

Literacy tests may also be given by veterans' absentee registration boards to applicants for registration by such boards, except in cases where the signing of an application constitutes conclusive proof of literacy as provided in section one hundred fifty-five of this chapter, at any time when such boards are in attendance at a veterans' bureau hospital for the purpose of the registration of qualified inmates or patients therein.

Such election inspectors in election districts in which personal registration is not required or central or veterans' absentee registration boards shall issue and file a certificate of literacy, under the same rules and regulations of the board of regents of the state of New York applying to districts in which personal registration is required, to the effect that the voter to whom such certificate is issued is able to read and write English, or is able to read and write English save for physical disability only, and to the extent of such physical disability, which shall be stated in the certificate, shall be filed by election inspectors and central and veterans' absentee registration boards as conclusive of such fact, except as hereinafter provided.

2. Any such crtificate of literacy, when issued, shall bear an individual number and shall be in duplicate. One of such duplicates may be retained by the person to whom it is issued, and the other duplicate shall be the certificate

received or filed by the election inspectors or by a central or veterans' absentee registration board, as the case may be. All duplicate certificates so received or filed by such inspectors and boards shall be retained by them and transmitted on the day received to the board of elections of the county, except in the city of New York where they shall be transmitted to the board of elections of such city, and be kept on file by such boards of elections. But a new voter may present as evidence of literacy a certificate or diploma showing that he has completed the work up to and including the sixth grade of an approved elementary school or of an approved higher school in which English is the language of instruction or a certificate or diploma showing that he has completed the work up to and including the sixth grade in a public school or a private school accredited by the Commonwealth of Puerto Rico in which school instruction is carried on predominantly in the English language or a matriculation card issued by a college or university to a student then at such institution or a certificate or a letter signed by an official of the university or college certifying to such attendance. But the genuineness of the certificate and the identity of the voter shall remain questions of fact to be established to the satisfaction of the election inspectors and subject to challenge, like any other fact relating to the qualification of a voter.

If, however, such certificate, diploma, matriculation card or letter of certification cannot be produced, the appropriate board shall register the applicant upon the execution of an affidavit in substantially the following form:

Appendix D—New York Laws Involved

ELECTION LAW

State of New York }
County of ..... } ss.:

.....being duly sworn, deposes and says: that he lives at .....
.....

That he is a duly qualified voter of the state of New York; that he completed the work up to and including the sixth grade of an approved elementary school, namely ..... on ..... 19....;
(name of school and location)
(or) of a public or private school accredited by the Commonwealth of Puerto Rico in which instruction was carried on predominantly in the English language, namely, ...
.....on ..... 19 ....; (or)
(name of school and location)
of a higher school in which English was the language of instruction, namely .....
(name of school and location)
on ..... 19....; (or) that he is a student at ....., that the certi-
(name of college or university)
ficate or diploma showing the completion of the work of such school was (destroyed) or (lost) or (is unavailable).

Sworn to before me, this
..... day of ....., 19....

.....
Signature of voter

.....
Official title of officer.

Appendix D—New York Laws Involved

Naturalization as a citizen of the United States, acquired on or after June twenty-seventh, nineteen hundred fifty-two, shall constitute conclusive proof of literacy provided that the new voter was required to and did establish, in the process of his naturalization, an understanding of the English language, including an ability to read, write and speak words in ordinary usage in the English language. The election inspectors, if not satisfied that the new voter did establish such an understanding of the English language in the naturalization process, may require the execution of an affidavit in substantially the following form and the appropriate board shall thereupon register the applicant:

State of New York }
County of ..... } ss.:

..... being duly sworn deposes and says that he lives at .....
.....

That he is a duly qualified voter of the State of New York; that he was naturalized on ..... day of ..... 19.... in the United States District Court, ... District of the State of ..... That in the course of such naturalization process he was required to and did establish that he has an understanding of the English language, including an ability to read, write and speak words in ordinary usage in the English language.

Sworn to before me this
..... day of .....
19.....

.....
Signature of voter

.....
Official title of officer

Appendix D—New York Laws Involved

§ 201. Delivery of Ballot to Voter

1. While the polls of the election are open, voters who have not previously voted thereat may, for the purpose of voting, enter within the guard-rail, through the entrance provided therefor; but not more than twice as many voters as there are voting booths shall be within the guard-rail at one time, in addition to persons lawfully there for other purposes than voting. The voter shall give his name to the inspectors, and, if in a city or village of five thousand inhabitants or over, his residence by street and number, or if it has no street number, a brief description of the locality, and shall state whether or not he is over twenty-one years of age. An inspector shall then announce, loudly and distinctly, the name and residence of the voter. If the election be one where poll-books are required to be provided, his name and residence shall be entered in both such books by the inspectors in charge of the registers. A person shall not be allowed to vote in any election district at an election where voters are required to be registered unless his name shall be upon the register for such election district. A person shall not be allowed to vote the ballot of a party at a primary election in any election district unless his enrollment with such party appears in such register. A person shall not be allowed to vote unless he shall have signed his name or made an identification statement as required by section one hundred ninety-eight. In the case of a new voter, as defined by section one hundred fifty, at a general election or a special election for which voters are required to be registered under the provisions of this chapter, in an election district where registration is not required to be personal, if the words "new voter" were entered opposite his name in the registers, he shall not be allowed to vote unless it appear to the satisfaction of

the board of inspectors, by the proof prescribed by section one hundred sixty-eight, that he is able to read and write English, except in the case of such a voter who is shown to be incapacitated therefrom by physical disability only. A new voter, as so defined, at an election for which voters are not required to be registered under the provisions of this chapter shall not be allowed to vote unless it appears to the satisfaction of the election officers, from such sources of information as may be available, that he is able to read and write English, except in the case of such a voter who is shown to be so incapacitated by physical disability only; and for such purpose the election officers may require him to produce a certificate of literacy described in section one hundred sixty-eight.

2. The right of any person to vote whose name is on the register shall be subject to challenge. If such voter is entitled to vote and is not challenged, or a challenge be decided in his favor, one of the clerks, or if there be no clerks the inspector assigned to the duty of delivering ballots, in the numerical order of the ballot or set, beginning with number one, and shall at the same time announce, loudly and distinctly, the number on the stub or stubs thereof. If the ballots are in sets, they shall be delivered in sets. If a new ballot or set of ballots be lawfully delivered to the same voter, a similar announcement shall be made as to the number on the stub or stubs of each new ballot or set delivered. Each ballot, when delivered, shall be folded in the proper manner for voting, which is: first, by bringing the bottom of the ballot up to the perforated line, and second, by folding both sides to the center or toward the center in such manner that when folded the face of each ballot shall be concealed, and the printed number on the stub and the indorsement on the back of the ballot shall be visible, so that the stub can be removed

without removing any other part of the ballot and without exposing any part of the face of the ballot below the stub, and so that when folded the ballot shall not be more than four inches wide. The number on each ballot or set of ballots so delivered, as printed on the stub or stubs, shall be entered forthwith opposite the name of the voter in the proper column of the two copies of the register, or of the two poll-books if such books are required to be provided.

3. No person other than an inspector or clerk shall deliver to any voter within the guard-rail any ballot, and they shall deliver only such ballots as the voter is legally entitled to vote, other than sample ballots.

4. Voters entitled to vote who are in the polling place at or before the time fixed by law for the closing of the polls shall be allowed to vote.